

MINUTES OF THE SOLID WASTE BOARD MEETING

Indiana Government Center South
402 West Washington Street
Conference Center Room A
Indianapolis, Indiana
March 18, 2003

The meeting was called to order by Mayor William Graham, Vice Chairperson, at 1:35 p.m. Those present for all or part of the meeting were:

Mr. Rick Dyar
Mr. Charles Himes
Mr. Jeff Langbehn
Mr. Howard Cundiff (Proxy, Indiana State Department of Health)
Mr. Tom Hohman (Proxy, Department of Natural Resources)
Ms. Pamela Fisher, (Proxy, Lieutenant Governor's Office)
Ms. Deborah Albright, Board Counsel

A quorum was present for part of the meeting.

In addition, the following IDEM staff members were present for all or part of the meeting:

Mr. Tim Method, Deputy Commissioner, Environmental Results
Mr. Bruce Palin, Deputy Assistant Commissioner, Office of Land Quality
Ms. Lynn West, Operations and Information Branch, Rules, Planning and Outreach Section
Ms. Marjorie Samuel, Operations and Information Branch, Rules, Planning and Outreach Section
Ms. Nancy King, Office of Legal Counsel
Mr. Thomas W. Baker, Office of Legal Counsel

Mayor Graham opened the meeting at 1:30 p.m. Mayor Graham announced that because the reappointment of the industry representative was delayed, board duties would be suspended because the vacancy occurred more than sixty days ago.

1. Mayor Graham announced that approval of the minutes from the Solid Waste Management Board meeting of November 19, 2002, would be postponed to the April 15, 2003 board meeting. APPROVAL OF MINUTES
2. Mayor Graham then asked Mr. Bruce Palin to address the Board. Mr. Palin announced that the Land Application Rule was final adopted by the Water Pollution Control Board. However, the issue of specifying restricting access to fields that have received biosolids for land application came up. It was decided to have public discussions on the subject. Mr. Palin invited the Board members to a public meeting on April 29, 2003, 1:00 p.m. at the Indiana Government Center South, Conference Center Rooms 1 and 2 on the signage issue. Mr. Palin then introduced Jeff Carter to address the Board. ASSISTANT COMMISSIONER'S REPORT

Mr. Carter, former Solid Waste Management Board Chairperson, said that he had resigned his position with the Board in order to assume responsibilities on the Carmel-Clay School Board. He also indicated that there was a pending White House position as well. He said that it was a

pleasure to work with everyone and he commended IDEM staff for their efforts and his fellow board members for their hard work. Mr. Palin said that, on behalf of the agency, Mr. Carter's leadership had been greatly appreciated. He then asked Ms. Lynn West to present a rules update.

Ms. West distributed the monthly Rulemaking Projects Calendar and pointed out a change in format that would make it more reader friendly. She said that #02-160, Ground Water Quality Standards for Hazardous Waste, had been added to the list. She also added that a rule will be coming regarding asbestos certification for landfill operators. The rule will eliminate the need for two certifications by offering operator certification that will include asbestos handling by landfill operators. Ms. West also mentioned that there were some meetings coming up regarding the municipal solid waste landfill change rule and the organic composting rules. Board members were advised to contact Marjorie Samuel for more information.

Mayor Graham then announced that hearings on the following rulemaking actions would be opened and continued to the April 15, 2003 Solid Waste Management Board meeting, to be held at the Indiana Government center South, Conference Center Room A at 1:30 p.m.

- Final adoption of amendments to rules of the Board at 329 IAC 3.1, hereafter known as the 2002 Hazardous Waste Annual Update Rule.
- Final adoption of amendments to rules of the Board at 329 IAC 9, hereafter known as the Underground Storage Tank Change Rule.

Mayor Graham said that the 2002 Hazardous Waste Annual Update Rule and the Underground Storage Tank Change Rule were included in the board packet for this meeting and are available for public inspection in the Indiana Department of Environmental Management File Room, located on the 12th floor of the Indiana Government Center North. The proposed rule for the 2002 Hazardous Waste Annual Update Rule was published in the January 1, 2003 Indiana Register at 26 IR 1239. The proposed rule for the Underground Storage Tank Change Rule was published in the January 1, 2003 Indiana Register at 26 IR 1201. Instructions were given to the public regarding offering oral statements and comments to the Board; the court reporter was affirmed.

3. Mayor Graham then opened the hearing for final adoption of adoption of new rules and amendments to rules of the Board at 329 IAC 3.1, hereafter known as the 2002 Hazardous Waste Annual Update Rule. Exhibit A, the proposed rule was introduced into the record. Mayor Graham asked if there were any comments. There being none, he continued the hearing to the April 15, 2003 Solid Waste Management Board meeting that will be held at the Indiana Government Center South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, at 1:30 p.m.

FINAL ADOPTION
 2002 HAZARDOUS WASTE
 UPDATE
4. Mayor Graham then opened the hearing for final adoption of amendments to rules of the Board at 329 IAC 9, the Underground Storage Tank Change Rule. Exhibit B, the proposed rule and Exhibit B1, the list of suggested changes, were introduced into the record. Mayor Graham asked if there were any comments. There being none, he continued the hearing to the April 15, 2003 Solid Waste Management Board meeting that will be held at the Indiana Government Center South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, at 1:30 p.m.

FINAL ADOPTION
 UNDERGROUND STORAGE TANK
 CHANGE RULE

5. Mayor Graham said that the nonrule policy document (NPD) ABrownfields Program and Site Status Letter®, would be presented. Mayor Graham said that the NPD is available for public inspection, comment and copying in the file room of the Department of Environmental Management, 12th floor, Indiana Government Center North, Monday through Friday between the hours of 8:30 a.m. and 4:30 p.m. The NPD was presented by Thomas W. Baker, Office of Legal Counsel, Indiana Department of Environmental Management.

Mr. Baker reviewed the history of the brownfield program and said that the NPD being presented to the Board would propose two alternatives to the voluntary remediation program. The A site status letter® states that IDEM does not anticipate requiring further action at a site based on a technical analysis of information submitted to IDEM and comparison of the information to standard contamination levels. The second alternative is a A comfort letter® that applies and interprets one of the various legal liability exemptions and explains the liabilities to those parties who are specifically relieved of liability. The NPD provides the standard by which IDEM will issue these two documents. Mr. Baker concluded by saying that IDEM will continue to work with local governments, developers and other interested parties to enhance and develop options that are available to brownfield stakeholders. For a verbatim account of Mr. Baker's remarks, please see pages 12 through 14 of the official transcript of this meeting.

There were no public comments so Mayor Graham said that written comments may be sent to Mr. Bruce Palin within the next thirty (30) days. If changes are made, the NPD will be presented again and placed in the file room for comment. Otherwise, the effective date of this NPD will be April 17, 2003.

6. Mayor Graham then asked Mr. Palin to address the Board regarding environmental rulemaking. Mr. Palin said that during the past several months there have been meetings with various external stakeholders to discuss improvements and changes to the rulemaking process to make it both user friendly and less confusing. He then asked Mr. Tim Method to address the Board. Mr. Method said that he would defer to those who were present at the meeting to offer public comment. He would then review the memorandum from the commissioner that he distributed to board members.

BOARD DISCUSSION ENVIRONMENTAL RULEMAKING

Mr. Guinn Doyle, Chair, Environmental Law Section, Indiana State Bar Association, spoke first. He said that the subcommittee focused on the rulemaking process, not any specific rule, and that the purpose of the work being done was to assist the Air, Water and Solid Waste boards in fulfilling their roles to adopt environmental rules and implement policies. The subcommittee wants to ensure that the rulemaking process allows for all interested parties to have an equal chance to be heard, that board members have information they need to carry out their duties, and commentators know the rationale behind changes that are either made or not made. Mr. Doyle then asked Ms. Betsy DuSold, Environmental Law Section, Indiana State Bar Association, to continue.

Ms. DuSold briefly reviewed the history of why the group was formed. She said that after studying and comparing statutes and the rulemaking process, they decided that statutes

were not so much a problem as some nonstatutory procedures that could be improved. She said that there are two key issues, specifically, notice and an opportunity for all interested parties to offer comment. The recommendations are part of a packet that is part of the official transcript of this meeting. She emphasized that while the process is quite lengthy, rulemaking should accommodate all stakeholders, and not protect one over another to ensure the best results for all. Ms. DuSold said that there are several bills concerning rulemaking that the legislature is considering, but those bills are still subject to change so she would not speak about them at the meeting.

Ms. DuSold then reviewed recommendations that the subcommittee made. Many of these recommendations were subsequently adopted into the memorandum from Commissioner Kaplan, also part of the official transcript of this meeting. Following is a brief synopsis of Ms. DuSold's review of recommendations.

- 1) Workgroups - actively solicit interest in involvement in the workgroup process. If a workgroup is warranted, use the first notice to announce formation of a workgroup and invite public participation.
- 2) First Notice - provide more detail about the rulemaking and alternatives.
- 3) Point Person - establish a point person on each rulemaking.
- 4) Board Packet - ensure that board packet materials are distributed to the boards at least two weeks in advance.
- 5) Incorporating Federal Requirements - when this is done, identify differences from federal requirements and the rationale for those differences.
- 6) Workgroup Reports - a summary report of workgroup results should be prepared and when a consensus is not achieved, minority points of view should be presented.
- 7) Fiscal Analysis - input from the public should be sought.
- 8) Rulemaking Website - should be utilized to get information out to the public quickly with ease of access.
- 9) Rulemaking Files - materials should be organized, and easily accessible.
- 10) Nonrule Policy Documents - should be circulated to the public prior to presentation before the boards to provide opportunity for comment and change.

Ms. DuSold then reviewed recommendations that would specifically target board involvement.

- 1) Encourage Board participation in rulemaking activities, i.e., public meetings, requests for additional information.
- 2) If new materials are presented at the board meeting by IDEM, a board member or the public, a vote should be postponed to a later meeting so that changes may be adequately studied.
- 3) IDEM staff members should not be seated with board members.
- 4) Board members should be given sufficient information to understand how rules being adopted interact or fit in with other activities and programs.
- 5) A procedural manual should be prepared for each board member.
- 6) Board members should be encouraged to have discussions on nonrule policy documents, as well as provide input and direction to staff.
- 7) There should be more interaction among the boards regarding activities and how processes and activities work.

Ms. DuSold mentioned that discussion by the Environmental Quality Service Council as well as the State Legislature regarding rulemaking is continuing. She mentioned that the Environmental Law Section will continue to meet and encouraged anyone interested should contact her or Mr. Doyle for further information. She then asked for questions or comments from the Board. For a verbatim account of Ms. DuSold's presentation, please see pages 19 through 33 of the official transcript of this meeting. Mr. Jeff Langbehn thanked the Bar Association for their involvement and mentioned that he would appreciate recommendations on how interaction with other boards could be accomplished. Mr. Chuck Himes expressed appreciation for the group's efforts and expressed the need to educate board members.

Mr. Tim Method then clarified what actions the agency would like to move forward on. When a rulemaking is being initiated, it would also appear as an agenda item to allow discussion and involvement by the board and public. Secondly, it is not the department's basic intent to present last minute changes to the board; however, the Board should retain discretion to act on changes during discussion. Mr. Method said that seating of department staff members would be rearranged so it would not appear that staff are board members. Mr. Method said that at the April board meetings, Board members would hear a presentation from IDEM staff on their respective programs= activities. Mr. Method said it was important to provide information needed by board members but not to overwhelm with too much. Mr. Method then asked Nancy King to address the Board regarding a procedural manual. For a verbatim account of Mr. Method's remarks, please see pages 36 through 41 of the official transcript of this meeting.

Ms. King distributed an outline of what the manual should contain. She said that comments and suggestions are welcome and the outline is intended to start discussion on what the manual should contain. The next bar association meeting is scheduled for March 25, 2003, where feedback could be provided in a more formal setting. However, she would be happy to receive comments or suggestions. Please see pages 42 through 45 of the official transcript of this meeting.

Mr. Method then continued with his comments on agency actions. He said that every effort would be made to get input from the board, both in terms of process as well as content of nonrule policy documents. He said that NPDs would be sent out to the public at least 45 days in advance for public and board input before they are presented to the board. Mr. Method also suggested that a couple times a year, a session should be scheduled where an agenda would be based on mutual interest, i.e., procedural manual or a rulemaking such as land application.

Mr. Method then briefly reviewed three bills currently active in the General Assembly.

- 1) Senate Bill 208 - changes made to first notice and the Legislative Services Agency fiscal impact analysis.
- 2) House Bill 1671- changes to environmental permit fees and a provision that would preclude the board from adopting rules that are more stringent than the corresponding federal requirement unless the Environmental Quality Service Council (EQSC) and the General Assembly have specifically authorized the provision.
- 3) House Bill 1221 - changes the make-up of the board. Non-appointed board members

would have to be represented by the heads of the Departments of Health and Natural Resources and the Lieutenant Governor, not proxies and they would be nonvoting.

Responsibilities of the technical secretary and board counsel are also addressed.

For a verbatim account of Mr. Methods comments, please see pages 45 through 49 of the official transcript of this meeting.

Mr. Tom Hohman asked about the function of the Board in hearing nonrule policy documents (NPD). Mr. Method said that changes to NPDs would not be appropriate if the changes conflict with the rule of law. But wherever possible, direction should be taken from the Board. It might also be determined after discussion, that the NPD should be a starting point for a new rulemaking action.

7. Mayor Graham then asked for public comment on topics of interest and potential rulemakings in Title 329. There were no comments. Mayor Graham took the opportunity to express appreciation to Jeff Carter for his work on the Solid Waste Management Board. He also thanked Mr. Method for his appearance at the meeting.

8. Mayor Graham adjourned the meeting at 2:43 p.m.

ADJOURNMENT

The next meeting will be April 15, 2003, at 1:30 p.m., in the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana 46204.

TECHNICAL SECRETARY